



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 02264-00

15 September 2000

MA1 [REDACTED] USN

Dear Petitioner [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 14 September 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the advisory opinion furnished by the Navy Personnel Command dated 25 May 2000, a copy of which is attached, and your letter dated 3 August 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the advisory opinion.

The Board was unable to find the contested evaluation was in reprisal for your complaints against your department head, or that the department head provided your commanding officer (CO)/reporting senior false information about you. They recognized that the officer who investigated your complaint under Article 138, Uniform Code of Military Justice recommended removing from the contested evaluation the specific reference to and quotation from the Chief of Naval Operations Integrated Vulnerability Assessment. However, they found this would not be a material correction in an otherwise adverse evaluation. They found your relief from various duties on 3 April 1999 was not an occasion requiring submission of a performance evaluation, so the relief action did not make the 16 April 1999 ending date of the contested evaluation incorrect. The Board was unable to find you were not the security department training officer, noting that the CO's letter of 14 September 1999 specifically stated that you were. They did note that Navy Support Office Instruction

1500.6A provided that department training officers were to be designated in writing, and that the CO's letter of 14 September conceded you had not been designated in writing. However, this did not convince them that you were not, in fact, the department training officer. The MA2 statement dated 8 April 1999 at enclosure (9) to your letter of 3 August 2000 did not state you were not the department training officer. His having communicated directly with the security leading chief petty officer did not establish that the MA2 was the department training officer, rather than you. You did not provide the National Security Agency written policy which, you assert, is that the department training officer must be an officer or chief petty officer designated in writing by the department head. The Board found the command could legally waive the local instruction's requirement to have an officer or chief petty officer as the department training officer. They were not persuaded that the contested evaluation was improperly used as a substitute for disciplinary action. They duly noted that the assessment report found a "good training program is in place." However, they further observed that as stated in the contested evaluation, the assessment found that the Naval Security Force was "not completing all Phase II training" and that "not all training is documented." They found nothing objectionable in the reporting senior's not having included quotations from the assessment which were favorable to you, nor could they find the reporting senior was not aware of the favorable aspects of the report. Finally, if you were not properly qualified for duty as assistant arms ammunition and explosive accountability officer, the Board found this would not be a material error, as the contested evaluation does not comment unfavorably on your performance of that collateral duty.

In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
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MILLINGTON TN 38055-0000

1610
PERS-311
25 May 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00ZCB)

Subj: [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his performance evaluation for the period 16 November 1998 to 16 April 1999.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the performance evaluation in question to be on file. It is signed by the member acknowledging the contents and his right to submit a statement. The member did desire to submit a statement. The member's statement and reporting senior's endorsement is properly reflected in his record.

b. The performance evaluation is a Special/Regular report. The member alleges the report was unjustly issued and does not reflect his performance.

c. The performance evaluation appears to be procedurally correct. A performance evaluation is unique to the period being evaluated. The reporting senior is charged with commenting on the performance or characteristics of a member under his/her command and determines what material will be included in a performance evaluation. The reporting senior clearly explains in block-43 of the report in question as well as his endorsement to the member's statement, his reason for writing the report as he did.

d. The member filed an Article 138, Complaint of Wrongs to support his contentions. The Deputy Assistant Secretary of the Navy (Personnel Programs) determined the actions of the general court-martial convening authority, Commander, Fleet Air Mediterranean was correct, and approved it, however, the member did not provide a copy of the final actions with his petition.

e. While the material the member provides with his petition gives background and insight and reflects favorably on the member, it does not invalidate the evaluation report.

- f. The member does not prove the report to be unjust or in error.
- 3. We recommend the member's record remain unchanged.

[REDACTED]

Head, Performance
Evaluation Branch